

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KENWAUNA GARRETT,	§
	§ No. 689, 2011
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 1002004921
	§
Plaintiff Below-	§
Appellee.	§

Submitted: June 22, 2012

Decided: August 9, 2012

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

ORDER

This 9th day of August 2012, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The defendant-appellant, Kenwauna Garrett, filed an appeal from the Superior Court’s November 18, 2011 violation of probation (“VOP”) sentencing order. We find no merit to the appeal. Accordingly, we affirm.

(2) The record before us reflects that, in June 2011, Garrett pleaded guilty to 2 counts of Forgery in the Second Degree and 1 count of Theft. She was sentenced on the first forgery conviction to 2 years of Level V incarceration, to be suspended after 6 months for decreasing levels of

supervision. On the second forgery conviction, she was sentenced to 2 years at Level V, to be suspended for 1 year of Level III probation. On the theft conviction, she was sentenced to 1 year at Level V, to be suspended for 1 year at Level I.

(3) On November 18, 2011, the Superior Court found that Garrett had committed a VOP with respect to her forgery and theft sentences by incurring new criminal charges. She was re-sentenced to a total of 5 years at Level V, to be suspended upon successful completion of the Level V Key Program and the Level IV Crest Program for decreasing levels of supervision. The Superior Court also disposed of other Court of Common Pleas VOP sentences in the same sentencing order by discharging them as unimproved and entered a civil judgment against Garrett in the amount of \$19,261.91.

(4) In this appeal, Garrett asserts several claims that may fairly be summarized as follows: the VOP sentences are invalid because a) she was discharged from those sentences as unimproved by another Superior Court judge; and b) they are excessive in violation of the TIS guidelines.

(5) The record reflects that, during an exchange with another Superior Court judge at the conclusion of her October 11, 2011 sentencing hearing on additional convictions of forgery, theft and unlawful use of a

credit card,¹ the judge made a comment regarding discharging certain of Garrett's VOPs as unimproved. The record further reflects that there were no VOPs before the Superior Court for disposition and that the October 11, 2011 sentencing order did not dispose of any VOPs. Finally, the transcript of the November 18, 2011 VOP hearing reflects that, when asked by Garrett's counsel if any of Garrett's VOPs had been discharged as unimproved at the sentencing hearing on October 11, 2011, the Superior Court judge ruled that, to the extent any such order had been entered, it was vacated.

(6) Garrett's first claim is that her VOP sentences are invalid because she was previously discharged as unimproved on those sentences by another Superior Court judge. We have reviewed the record on that point carefully and conclude that the Superior Court acted appropriately when it ignored the statement of the previous Superior Court judge. The statement was without any legal or factual foundation and was not reflected in the final sentencing order. We, thus, conclude that there was no error or abuse of discretion on the part of the Superior Court.

(7) Garrett's second claim is that her sentences are excessive in violation of the TIS guidelines. There is no evidence reflecting that the

¹ It was those charges that provided the basis for the VOP at issue here.

sentences imposed by the Superior Court exceeded the amount of Level V time remaining on Garrett's original sentences. Any claim of illegality is, therefore, without merit.² Moreover, it is well-settled that a defendant has no legal or constitutional right to appeal a sentence solely on the ground that it does not conform to the TIS sentencing guidelines.³ We, therefore, conclude that Garrett's second claim also is unavailing.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

² *Moody v. State*, 988 A.2d 451, 454 (Del. 2010) (citing *State v. Sloman*, 886 A.2d 1257, 1260 (Del. 2005) and Del. Code Ann. tit. 11, §4334(c)).

³ *Gaines v. State*, 571 A.2d 765, 766-67 (Del. 1990).